INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 3394 of 1990
Date of decision November 21, 2007

1. Banwari Lal son of Niranjan Dass, r/o H.No.302, Sector 41-A, Chandigarh.

..... Petitioner

Versus

1. The State of Punjab through Home Secretary, Punjab Government, Chandigarh.
2. District and Sessions Judge, Ropar.

3. Senior Sub Judge, Ropar.

..... Respondents

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. Mehar Singh, Advocate
for the petitioner.

Mr. Jaspreet Singh, Assistant Advocate General, Punjab for the respondents.

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Sham Sunder, J.

Banwari Lal-petitioner has filed this petition, for the issuance of a writ, in the nature of certiorari, quashing the order dated 3.9.1987 (Annexure P-2). Prayer for reinstatement along with all other consequential benefits, from the date of his illegal dismissal, has also been made.

2. The petitioner was appointed, as a Process Server, in District Courts, Ropar, and was confirmed as such, in the year 1961. A criminal case under Sections 467,468,471 and 120-B IPC was registered against the petitioner and one Ram Saran vide FIR No. 67 dated 1.6.1982 Police Station, Kharar District, Ropar. He was convicted and sentenced along with his co-accused, by the Court of the Sub Divisional Magistrate, Kharar on 27.8.1987. The petitioner preferred an appeal, against the

judgment of conviction and the order of sentence dated 27.8.1987, in the Court of the Sessions Judge, Ropar on 1.9.1987. The appeal was entrusted to the Court an Additional Sessions Judge, Ropar. The sentence awarded to the petitioner was suspended by the Court of Additional Sessions Judge, Ropar, in the appeal, vide order dated 3.9.1987(Annexure P-1) in the morning. The order was duly brought to the notice of the Senior Sub Judge, Ropar on the same day, but in the afternoon, he (Senior Sub Judge) passed the order of dismissal (Annexure P-2). The petitioner made a representation (Annexure P-3) to the Senior Sub Judge, Ropar, against the order of dismissal dated 3.9.1987. That representation was rejected vide order dated 3.9.1987 (Annexure P-4). It was further stated that the petitioner was acquitted, in the criminal case, referred to, hereinbefore, by the Additional Session Judge, Ropar, vide order dated 20.4.1989 (Annexure P-5) holding that the case was of no evidence, and, therefore, the conviction and sentence of the petitioner could not be sustained. After the order of acquittal, the petitioner again requested respondent No.3, to reinstate and allow him, to join his duties, vide representation dated 25.4.1989 (Annexure P-6). Thereafter, a number of reminders were issued, one of which is (Annexure P-7), but the petitioner was not reinstated. It was further stated that the order of dismissal dated 3.9.1987, is illegal, being violative of the principles of natural justice. It was further stated that after the acquittal of the petitioner, from the criminal case, which formed the basis of his dismissal, he was liable to be reinstated, and was required to be paid all the consequential benefits. When the respondents failed to redress the grievance of the petitioner, the instant writ petition, as stated above, was filed.

3. On notice, the respondents, filed written statement, wherein, the appointment of the petitioner, as Process Server,in District Courts, Ropar; registration of a criminal case, against him; passing of order of dismissal dated 3.9.1987; his conviction, in the said criminal case, by the Sub Divisional Magistrate, Kharar; and his acquittal, in the same, by the Court of Additional District and Sessions Judge was admitted. It was also admitted that the petitioner filed applications for his reinstatement on 25.4.1989, 21.7.1989,17.1.1990 and 21.2.1990, but no action could be taken, on the same ,as the appeal against his acquittal, was pending, in the High Court. It was further stated that the order of dismissal of the petitioner dated 3.9.1987, is legal and valid. The remaining averments, were denied being wrong.

4. I have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

5. There is hardly, any dispute, with regard to the appointment of the petitioner, as a Process Server, in District Courts, Ropar. He was dismissed from service solely on the ground, that a criminal case was registered against him, under Sections 467,468,471 and 120-B IPC vide FIR No. 67 dated 1.6.1982, in Police Station, Kharar, wherein, he was convicted and sentenced by the Court of the Sub Divisional Magistrate, Kharar. There is also no dispute, about the factum, that the petitioner was, ultimately, acquitted by the Court of Additional Sessions Judge, Ropar, vide judgment dated 20.4.1989(Annexure P-5). It was specifically recorded by the Court of Additional District and Sessions Judge, in the judgment, referred to above ,that it was a case, which was definitely of no evidence, against the accused, and, therefore, his conviction and sentence could not be

sustained. Not only this, the State of Punjab, feeling aggrieved, against the judgment dated 20.4.1989, of the Additional District and Sessions Judge, Ropar, preferred appeal No.496-DBA of 1989 which was dismissed on 19.2.2003, by this Court, copy whereof was placed, on the record by the Counsel for the petitioner, at the time of arguments. In these circumstances, it is to be determined, as to whether, the petitioner is entitled to reinstatement into service, with full back wages, as per the relevant rules or not. The principle of law, laid down in **Shashi Kumar Versus Uttri Haryana Bijli Vitran Nigam and another** 2005(1) RSJ 718 by a Division Bench of this Court, was that the moment the criminal charge fails, in a Court of law, the person should be deemed to be exonerated of the blame, and the order of dismissal, passed against the delinquent, on the basis of his conviction, in such a criminal case, was liable to be set aside. The conduct of the petitioner, which was taken into consideration, at the time of passing the order of dismissal dated 3.9.1987, against him, only related to the registration of a criminal case, against him, and his conviction therein, by the Court of the Sub Divisional Magistrate, Kharar, vide judgment dated 27.8.1987. When that judgment of the Sub Divisional Magistrate, was set aside, by the Additional District and Sessions Judge, vide order dated 20.4.1989 (Annexure P-5), and the petitioner was acquitted of the charge, and even an appeal, preferred against the acquittal, by the State of Punjab was dismissed, in my considered opinion, there was no reason, on the part of the respondents, not to reinstate the petitioner into service, and pay him all the benefits, including the back wages, admissible under the relevant Rules, after setting aside the order of dismissal dated 3.9.1987. The claim of the petitioner, thus, deserves to be accepted. The order of dismissal dated

3.9.1987 (Annexure P-2) of the petitioner is held to be illegal and is set aside.

6. Learned Counsel for the respondents, however, contended that since the petitioner was not honourably acquitted, by the Court and, as such, the order of dismissal dated 3.9.1987, was not liable to be set aside, resulting into his reinstatement into service. The contention of the learned Counsel for the respondents, does not appear to be correct. This Court vide judgment dated 19.2.2003, held that there was no merit, in the appeal, and the same stood dismissed. This Court never recorded a finding, that it was not a case of full exoneration of the petitioner. Once, the petitioner was acquitted by the Court of law, and the appeal against acquittal, was also dismissed by this Court, the question of his honourable acquittal, on full exoneration, or otherwise, pales into insignificance. The contention of the learned Counsel for the respondents, being without merit, must fail, and the same stands rejected.

7. In view of the reasons recorded, hereinabove, the petition is accepted with costs. The order dated 3.9.1987 (Annexure P-2) being illegal, is set aside, and the respondents are directed to reinstate the petitioner, into service, immediately if he has not already attained the age of superannuation and pay him all the consequential benefits, flowing from setting aside the said order, admissible under the relevant Rules, within a period of eight months, from the date of receipt of a certified copy of the judgment.

November 21, 2007 **(SHAM SUNDER)**
archana **JUDGE**